

Freedom to Read Foundation

ALA American Library Association

Managing and Addressing **Book Challenges** in Your Community

Law, Policy, & Advocacy

#IntellectualFreedom #FreePeopleReadFreely @ALALibrary @OIF @FTRF

Managing and Addressing Book Challenges in Your Community

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ALA Code of Conduct

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The goal of this Code of Conduct is to establish a culture of professional, courteous, respectful, and inclusive communication among all participants on all online platforms used by ALA. We are each responsible for the content we post on these platforms.

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#IntellectualFreedom #FreePeopleReadFreely @ALALibrary @OIF @FTRF

ALA Office for Intellectual Freedom (OIF)

Support & Resources

Challenges: reporting, and coaching
Letters, media consulting
Policy review & development

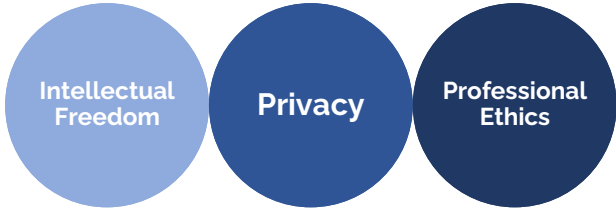
Education & Advocacy

Banned Books Week
Intellectual Freedom Manual
Speaking, writing, media interviews
Public engagement

Member Leadership

Conference programming
Liaison to Committees and Round Tables
Collaboration with ALA units and leadership

www.ala.org/oif



OFFICE FOR
Intellectual Freedom
American Library Association

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ALA Public Policy and Advocacy (PPA)

PPA follows and influences legislation, policy, and regulatory issues of importance to the library field and its public and works to ensure that libraries are consistently involved in decision-making processes by:

- **Informing** government of the needs and concerns of the library community;
- **Providing** library supporters with up-to-date information;
- **Building** coalitions with representatives of other groups with similar concerns;
- **Developing** and supporting grassroots networks;
- **Offering** resources and training to further local, state and federal policy and advocacy objectives.

ala.org/advocacy/advocacy-public-policy
@LibraryPolicy



Freedom to Read Foundation (FTRF)



LITIGATION

FTRF has defended booksellers, librarians, and artists in First Amendment cases – ensuring the literary community's interests are represented in courts.



EDUCATION

As a nonprofit organization FTRF provides scholarships to library science students for tuition and national conferences. FTRF also hosts regular webinars to arm members with anti-censorship tactics and relevant First Amendment information.



ADVOCACY

The foundation advocates for free speech and freedom of the press – fundamentals of a successful democracy. As a sponsor of the national Banned Books Week initiative, FTRF distributes annual grants that allow libraries and organizations to host impactful free expression programs.

For over 50 years the Freedom to Read Foundation has used litigation, education, and advocacy to help library workers fighting to protect First Amendment rights.

www.ftrf.org/page/Contact



Freedom to Read Foundation
FREE PEOPLE READ FREELY

Speakers

Deborah Caldwell-Stone

Theresa Chmara

Megan Cusick

Managing and Addressing Book Challenges in Your Community

Censorship Issues and Trends

- Activists targeting school and library boards
 - Disruptions/challenges at public comment sessions
 - Board Recalls and Elections
- Challenges to diverse content fueled by social media
 - LGBTQIA+, sex education materials
 - Anti-racist books, Black American History, Authors who are Black, Indigenous, or Persons of Color (CRT)
- Adverse legislation
 - “Parental Oversight Boards” Model legislation
 - Bans or limits on discussing or teaching “divisive topics,” or “Critical Race Theory”
 - Eliminating obscenity / harmful to minors protections for librarians and teachers
- Criminal Complaints targeting library staff, educators, and materials

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Minors and the First Amendment

- Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969): Court held that students “do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”
- Board of Education v. Pico, 457 U.S. 853 (1982): the right to receive information is protected by the First Amendment.

Protected/Unprotected Speech

- The First Amendment states: “Congress shall make no law ... abridging the freedom of speech.”
- Supreme Court has carved out some speech as unprotected: obscenity, harmful to minors speech, child pornography, defamation, false advertising, true threats and fighting words.
- The First Amendment applies to *government* entities, not private entities.

Unprotected Speech: Obscenity

- State law definitions will vary.
- Determination by a jury or judge acting as fact-finder.
- **Test:** (1) that the average person, applying “contemporary community standards” would find the work, as a whole, appeals to the “prurient interest,” (2) that the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law, and (3) that the work, taken as **a whole**, lacks serious literary, artistic, political or scientific value. Miller v. California, 413 U.S. 15 (1973) (emphasis added).
- Some states exempt libraries and schools.

Unprotected Speech: Harmful to Minors or Harmful to Juveniles

- The test parallels the Miller test, but the considerations are in the context of offensiveness and serious value for minors. Ginsberg v. New York, 390 U.S. 629 (1968).
- Determination must be made in the context of whether the material would be harmful to the oldest of minors.
- Material cannot be deemed harmful to minors if it would be constitutionally protected for a seventeen-year-old even if one might conclude that it was “harmful” for a five-year old. American Booksellers Assn. v. Virginia, 882 F.2d 125, 127 (4th Cir. 1989), cert. denied, 494 U.S. 1056 (1990) and American Booksellers v. Webb, 919 F.2d 1493, 1504-05 (11th Cir.), cert. denied, 494 U.S. 1056 (1990).

Unprotected Speech: Child Pornography

- Portrayals of actual children engaged in sexual activity. New York v. Ferber, 458 U.S. 747 (1982).
- Court held that Ferber does not extend to “virtual” child pornography, whether generated by computer or by using young-looking adults as actors. Ashcroft v. Free Speech Coalition, 535 U.S. 234 (2002).

Book Removal — School Library

- Board of Education v. Pico, 457 U.S. 853 (1982): “[i]f petitioners *intended* by their removal decision to deny respondents access to ideas with which petitioners disagreed, and if this intent was the decisive factor in petitioner’s decision, then petitioners have exercised their discretion in violation of the Constitution.” *Id.* at 871 (emphasis added).

School Library Removal Test

- **Unconstitutional:** removal of material because the school board disagrees with the content.
- **Constitutional:** material is educationally unsuitable or pervasively vulgar.
- **How proven:** educational suitability will often require expert testimony; motivation or disagreement with content is a fact question.
- **Failure to follow own procedures:** often cited by courts as evidence of unconstitutional motivation.

When is Motivation Unconstitutional?

- Case v. Unified School Dist., 908 F. Supp. 864 (D. Kan. 1995). A high school in Olathe, Kansas removed *Annie On My Mind* from the school library even though it had been in the general collection of the library since the early 1980's. The school board argued that the book was educationally unsuitable.
- The district court held that the school board's action was unconstitutional because the "substantial motivation" in their removal decision was "their own disagreement with the ideas expressed in the book."
- The district court also held that the board's failure to consider other less restrictive alternatives to complete removal and their disregard of their own established review policies were further evidence of improper motivation. *Id.* at 874-876.

Unconstitutional Motivation: a Factual Question for the Court or Jury

- Campbell v. St. Tammany Parish School Board, 64 F.3d 184 (5th Cir. 1995). The St. Tammany Parish School Board voted to remove *Voodoo & Hoodoo* from all public school libraries in the parish. The banned book contained a history of Louisiana customs related to voodoo and contained descriptions of voodoo spells.
- The District Court held that the removal of the book was unconstitutional. The United States Court of Appeals reversed and remanded, holding that the district court could not make its determination without a trial on the merits.
- The Fifth Circuit held that the Supreme Court's plurality decision in Pico was instructive, holding that "the key inquiry in a book removal case is the school official's substantial motivation in arriving at the removal decision." *Id.* at 190.

Public Library Censorship Test

- Courts have held that the First Amendment provides a right to receive information and that a public library is considered a limited or designated public forum. See, e.g. Sund v. City of Wichita Falls, Tex., 121 F. Supp. 2d 530, 547 (N.D. Tex. 2000).
- Removal based on **viewpoint** prohibited in any public forum, limited/designated public forum or non-public forum.
- If removal is based on **content**, governmental entity must establish that the removal of material meets strict scrutiny.
- **Strict scrutiny test:** (1) compelling interest; (2) narrowly tailored to achieve compelling interest; and (3) no less restrictive alternative.

Curriculum Decisions

- Hazelwood School District v. Kuhlmeier, 484 U.S. 267 (1988). Curriculum decisions are permissible if "reasonably related to legitimate pedagogical concerns."
- Gonzalez v. Douglas, 269 F. Supp. 3d 948 (D. Ariz. 2017) (holding that removal of Mexican-American Studies program from curriculum, which included removal of materials from classroom libraries, was not reasonably related to a legitimate educational purpose, but rather for an invidious racial purpose and a politically partisan purpose).

Managing and Addressing Book Challenges in Your Community



Think globally,
act locally...

- The grassroots myth
- The bigger picture
- The long game

It's not just Virginia. Education and critical race theory are on the ballot across the US in 2022.

Glenn Youngkin's victory, using parent outrage over education as a central theme, has given Republicans nationwide a potent campaign issue.



A campaign sign for Virginia governor-elect Glenn Youngkin was still on display on a dirt road in Waterford, Virginia, on Nov. 21. Loudoun County, Virginia, exemplifies the rapidly-changing suburbs of the United States, and had an election in 2021 that may shed some light on what suburban and suburban voters may be thinking heading into the 2022 midterms. [Jasper Cole, Jasper Cole/USA TODAY](#)

[Ledyard King and Mabinty Quarshie](#) USA TODAY
Published 8:01 a.m. ET Dec. 5, 2021 | Updated 11:38 a.m. ET Dec. 6, 2021

wanting to know how she and a small band of Northern Virginia activists took on the local school board and sparked a movement [that help turn Virginia from blue to red last month](#).

The parents trekked from suburban communities in Arizona, Texas, Florida and other parts of the country to a retreat in Washington, D.C., in

Advocating for the freedom to read

- Be informed
- Be proactive
- Be prepared
- Be active



Be informed

- Library landscape
- Political landscape
- Community landscape



FEDERAL

'Parents' Bill of Rights' Underscores Furor Over Curriculum and Transparency in Schools

 By [Andrew Ujifusa](#) — November 16, 2021 7 min read

New legislation in Congress to prioritize parents' rights to know what books their children are reading in school and the identity of guest presenters in classrooms underscores how such culturally divisive issues could stay in the political spotlight as

NEWS

Missouri leaders discuss 'Parents' Bill of Rights'

Blythe Bernhard St. Louis Post-Dispatch
Published 11:44 a.m. CT Dec. 2, 2021

As school boards across the U.S. face conservative backlash to policies on masks, library books and social studies curriculum, Missouri Attorney General Eric Schmitt is proposing a "Parents' Bill of Rights" for the next legislative session.

Such a bill, similar to a federal version introduced last month by U.S. Sen. Josh Hawley, would require schools to provide information to parents on curriculum, extracurricular clubs, teacher training and school choice programs such as the Missouri Empowerment Scholarships Accounts.

Be proactive

- Policy fundamentals
- Advocacy fundamentals



Be prepared

- Training
- Communication
- Established protocols



Iowa legislators target books and teachers for upcoming session



Illustration: Sarah Grillo/Ados

Two Iowa Republican leaders said they want to pursue legislation that makes it a felony offense for school officials, including teachers, to provide "obscene materials" to students.

Be active

- Educate
- Mobilize
- Show up



ala.org/advocacy/fight-censorship

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Any Questions?

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